

Missouri

I. Background

The Missouri Child Support Enforcement program (CSE) is within the Family Support Division of the Missouri Department of Social Services. CSE is state administered. It consists of a Central Office located in Jefferson City, two regional offices, and 23 field offices across the state. According to unaudited data, at the close of federal fiscal year 2006, the Missouri child support program had 367,901 open cases¹ and 930 full-time equivalent staff.² That year Missouri scored above the national average on two of the five federal performance measures (support order establishment and cost-effectiveness). The state was lower than the national average in three performance measures (paternity, current collections, and arrearage collections).

Missouri has had an administrative process since the early 1980's. The state wanted a more efficient process for resolving child support cases and saw a potential for improvement by enacting administrative processes.

The statutory authority for the Missouri administrative process is within Missouri Revised Statute (RSMo), title 30, Chapter 454. The rule setting forth procedures by which DCE conducts administrative hearings is at 13 CSR 30-7.010.

II. Due Process

When a child support establishment case is opened, the practice is for CSE to mail the parties a financial questionnaire. The parties may return the information via mail; at this point, they do not need to appear in person. Based on the income information provided by the parties and available to CSE through other sources, a child support specialist (CSS) calculates the guideline amount. The CSS prepares a Notice and Finding of Financial Responsibility, which is served on the noncustodial parent by certified mail, return receipt requested, or by personal service. If the custodial parent is the IV-D customer and has no obligations under the order, a recent change in law allows the agency to serve the custodial parent with a copy of the Notice and Finding by first class mail.

Where appropriate, based on the circumstances of the case, the Notice states:

- The monthly future support for which the parent will be responsible
- That if the parent wants to discuss the support amount, the parent may, within 20 days from service of the Notice, contact CSE and request a negotiation conference. The Notice explains the negotiation process.
- That if a parent objects to all or any part of the Notice and Finding of Financial Responsibility and no negotiation conference is requested, the parent must, within

* Interview with Laura O'Mara, Deputy Director, Child Support Program and Policy, Family Support Division.

¹ Table 4, Statistical Program Status, OCSE FY 2006 Preliminary Data Report.

² State Box Score, OCSE FY 2006 Preliminary Data Report.

20 days from service of the Notice, send CSE a written response that lists any objections and requests a hearing. If, in response to the objections, CSE issues a new Notice and Finding of Financial Responsibility, the parent will have 20 days from the date of issuance of the new Notice to send a hearing request.

- That if a timely response is received, and if the response raises factual questions requiring the submission of evidence, the parent has the right to a hearing before an impartial hearing officer who is a licensed attorney.
- That if no timely response is received, CSE may enter an order in accordance with the Notice and Finding of Financial Responsibility
- That as soon as the order is entered, the obligor's property is subject to collection actions.
- That if a parent has any questions, the parent should telephone or visit CSE or consult an attorney.

If there is no timely response to the Notice and Finding, setting forth objections and requesting a hearing, the agency enters a default order in the amount of the Notice, which is signed by a representative of the director. The default order is effective without court ratification. However, it is common practice for the agency to file the default order with the clerk of circuit court. Once the order is filed, the clerk enters it in the judgment docket. At that point the order has all the force and effect of an order of the circuit court, including lien effect and contempt of court. Note: Any administrative order filed with the court does not have to be signed by an attorney, as provided by rules of civil procedure. Nor are any further pleadings necessary. CSE serves the parties with a copy of the default order by first class mail.³

If a party responds to the Notice within 20 days of service by providing additional income information, CSE prepares a second Notice and Finding of Financial Responsibility, which is served on the parties. The parties again have 20 days to respond to that Notice and Finding. A party timely challenges the Notice and Finding of Financial Responsibility by sending CSE a written request for a hearing. CSE is not stayed from enforcing its administrative order during the hearing process and during any appeal to the courts, unless expressly enjoined by court order.

The administrative hearing officer is employed by the Division of Legal Services, which is a separate division within CSE's umbrella agency, the Department of Social Services. The administrative hearing officer for establishment and modification hearings must be a licensed attorney. In contrast, the administrative hearing officer hearing a challenge to an enforcement action may be a non-lawyer.

If the list of objections filed by the party does not raise a factual issue, the Family Support Division may enter an order without an evidentiary hearing. That order is final. A party may appeal the order to court.

³ The law changed this year from requiring service of the order on the noncustodial parent by registered or certified mail, to allowing service by first class mail.

If there is an evidentiary hearing, it is conducted pursuant to the Missouri Administrative Procedure Act. Parties may be represented by attorneys, but such representation is not necessary. A child support specialist presents testimony on behalf of the child support agency; it is rare for a IV-D attorney to participate in an administrative hearing. Parties have the option of choosing to conduct the administrative hearing in-person or by telephone. Most people choose telephonic hearings. There is a record of the proceeding. Based upon the evidence presented, the administrative hearing officer makes specific findings and issues an administrative order. The order is final and enforceable upon its entry; the court does not need to ratify the order in order for it to become effective. As a practical matter, the agency files the order with the court in order for it to receive a court file number.

The administrative order is mailed to the parties within 14 days of its issuance. The parties have 30 days from the mailing of the order to petition for review in the circuit court. The appeal is heard on the record.

If the person who requested the administrative hearing fails to appear, after proper notice, the hearing officer must enter findings and an order in accordance with the Notice and Finding of Financial Responsibility.⁴

Over the years, there have been several procedural challenges to steps within the Missouri administrative process. For example, in foster cases, the agency at one time would administratively establish a new order against both parents even though there may have been an existing judicial order against one of them. Due to the decision in *Garcia*,⁵ Missouri enacted a statute authorizing the agency to use its administrative process to establish a support order against the parent without an established support obligation; to modify the obligation against the other parent who is already subject to a court order, the agency must proceed through court action.

The only constitutional challenges that have arisen focus on the administrative modification of judicial orders. In each case, the Missouri Supreme Court has upheld the Missouri procedures. See, e.g., *Chastain v. Chastain*, 932 S.W.2d 396(Mo. 1996); *Hansen v. Hansen*, Case Number SC88242, Missouri Supreme Court, issued 6/26/2007. In the *Hansen* case, the noncustodial parent argued that the agency's filing of a Motion for Modification of Child Support Order constituted an attempt by CSE to act in a judicial rather than an administrative capacity and thereby violated the separation of powers. The Supreme Court disagreed: whether issued by CSE or an administrative hearing officer, the administrative order modifying a court order is not effective under Missouri law until the administrative order is filed with and approved by the court that

⁴ The exception is if the hearing officer determines that no good cause for the Notice and Finding exists.

⁵ <http://www.courts.mo.gov/courts/pubopinions.nsf/ccd96539c3fb13ce8625661f004bc7da/3ec3803688808fb8a86256cc900626c11?OpenDocument&Highlight=0,huerta>. In *Garcia*, the Court of Appeals was asked to interpret a statute authorizing the child support division to award support administratively if no prior court order had been entered. The child support division argued that the existence of a divorce decree ordering the father to pay support to the mother did not prevent the division from administratively entering an order against the mother, when the father later became the custodial parent. The Court of Appeals disagreed.

entered the court order. It is this statutory requirement of court approval that the authority placed in CSE to initiate a process to modify judicial child support orders does not offend the Missouri constitution.

III. Establishment of Parentage

Missouri can use the administrative process to establish parentage only when there is a presumption of paternity, e.g., signed Affidavit Acknowledging Paternity, genetic test results that indicate a 98 % probability of parentage, child born during parties' marriage. If there is no presumption of parentage, the agency will refer the case to a IV-D attorney in order to proceed judicially.

Initially, the agency sends the alleged father by first class mail a letter informing him that he has been identified as a potential father of the named child. The letter states that he may sign an Affidavit Acknowledging Paternity or request genetic testing. A copy is not sent to the custodial parent.

If the alleged father responds to the letter and both parties sign a paternity affidavit, that affidavit is filed with the Bureau of Vital Statistics. By operation of law, it constitutes a paternity determination. At that point, the agency will use its administrative processes to establish a support order, which will include a finding of parentage.

If the alleged father responds to the letter by requesting genetic testing, the agency coordinates the testing. Test results are mailed to the parties. If the test results indicate at least a 98% probability of parentage, there is a presumption of parentage. At that point, the agency will use its administrative process to establish a support order, which will include a finding of parentage. If the test results exclude the alleged father, the agency ceases to pursue paternity establishment against that man.

If the alleged father repeatedly fails to show for genetic testing, after being administratively ordered to do so, the agency refers the case to the prosecuting attorney for judicial establishment.

If the alleged father does not respond to the letter within 30 days, the current practice is for the agency to then refer the case to the prosecuting attorney for further proceedings in court. The prosecuting attorney files legal pleadings with the court. The court schedules a hearing and serves the alleged party with a summons. Usually the hearing will address paternity and support.

IV. Support Establishment

When a child support establishment case is opened and paternity is not an issue, CSE mails the parties a financial questionnaire. The parties may mail the information back to the agency; they do not need to appear in person. According to the agency representative, there is not a good response rate to the letter. Based on any income information provided to CSE by the parties or available through other sources, a child

support specialist (CSS) calculates the guideline amount. If there is no current income information available, the CSS can impute income; the Division has provided extensive written guidance as to when it is appropriate to impute income and the methods for doing so, depending upon the circumstances. CSE has also provided guidance to its staff concerning Missouri law on permissible deviations from the guideline amount. The CSS has authority to deviate from the guideline amount based on a permissible deviation.

The CSS prepares a Notice and Finding of Financial Responsibility, which is served on the noncustodial parent by certified mail, return receipt requested or by personal service. If the custodial parent is the IV-D customer and has no obligations under the order, a recent change in law allows the agency to serve the custodial parent with a copy of the Notice and Finding by first class mail.

See the discussion in the due process section above for the contents of the Notice, a description of what happens after a Notice and Finding are served on the parties, an explanation of the administrative hearing, and appeal rights.

V. Review and Adjustment/Modification

Missouri law does not provide for Cost of Living Adjustments (COLAs) in administrative support orders.

Either party may request a review of an administrative support order to determine if a modification is appropriate; the agency may also initiate a review. Parties can request a review once every three years. If a parent requests a review by CSE, the motion to modify is served on both parties by either personal service or certified mail. There must be a 20 % change in the support amount before CSE will proceed with a modification. A party has 30 days to resolve the matter by stipulated agreement or by serving CSE and the other party, by regular mail, with a written response setting forth any objections to the Motion and a request for hearing.

If there is no response to the motion, CSE may enter an order by default granting the relief sought. Copies of the order are mailed to the parties within 14 days of the issuance of the order.

If a hearing is requested, the hearing is before an administrative hearing officer who is designated by the Department of Social Services. Both parties may be represented by an attorney and present evidence. The administrative hearing officer must make findings and enter an order, which is then mailed to the parties within 14 days of its issuance. Any person adversely affected by the administrative decision may appeal by filing a petition for review in circuit court within 30 days of the mailing of the decision. The review is on the record.

Unlike many administrative process states, the Missouri child support agency has authority to initiate the modification of a judicial order. At any time after the entry of a court order for support in a IV-D case, a parent or CSE may file a motion to modify the

court order. The process, in terms of the notice and response period, is the same as noted above. However, there is one important difference: Any administrative order modifying a judicial order is not effective until the administrative order is filed with and approved by the court that entered the court order. The court may approve the administrative order if no party affected by the decision has filed a petition for judicial review. At the end of the 30 day period, if there is no response, the court must enter its decision within 15 days. If there is a timely request for judicial review, the court's review is on the record. If the court determines that the administrative order complies with Missouri statutory law and applicable supreme court rules, the court will make finding to that effect and approve the order. If, after review, the court finds that the law and rules were not correctly applied, it may select other appropriate remedies.⁶ The court can set an administrative modification of a judicial order for trial *de novo* if the court decides not to approve a modification filed by the Division.

There have been several challenges to Missouri's administrative process for the review of judicial orders. As noted in the Due Process section, the Missouri Supreme Court has upheld the constitutionality of the process because any administrative order must be filed with and approved by the court that entered the court order before it is effective. In *Hansen*, the court did find fault with the Motion to Modify that the agency was using and directed the agency to cease using the Motion. Contrary to Missouri law, the court found that the Motion then used stated on its face that CSE could issue an order changing child support. "This notice fails to inform parents of their rights, misleads parties as to the respective roles of the agency and the court, and should no longer be used." The court emphasized, however, that the fact that the Motion to Modify was inadequate did not mean that the statute was unconstitutional. NOTE: The Missouri legislature amended the law governing CSE authority to modify, effective August 28, 2007, "to make it even clearer that the Division has no authority to modify an existing support order by requiring that an order not only must be filed with and approved by the court but that the court must make a specific finding whether the proposed order complies with the statute and court rules or must hold a 'trial de novo' in the event the court does not approve the administrative order."⁷

VI. Enforcement

The Missouri child support agency has a full range of administrative enforcement remedies, e.g., income withholding, license suspension, administrative seizure, credit bureau reporting. The agency typically exhausts administrative remedies before using judicial enforcement, such as contempt.

If a court order has been previously entered (by Missouri or another state), CSE may enter an administrative order in accordance with the court order upon receipt of a certified copy of the court order and a statement of arrearages. The agency serves the obligor with a copy of the administrative order, by certified mail, return receipt requested.

⁶ The requirement for findings by the court is a recent legislative change, effective August 28, 2007, to make it clearer that CSE has no authority to modify an existing court order.

⁷ *Hansen v. Hansen*, Case Number SC88242, Missouri Supreme Court, issued 6/26/2007, fn. 4.

It sends the custodial parent a copy by first class mail. Once the administrative order is entered, the agency initiates enforcement by income withholding.

Notices and timeframes to respond by requesting an administrative hearing vary, according to the particular enforcement remedy. Unlike administrative hearings concerning establishment or modification, hearings to determine arrearages may be conducted by nonattorney hearing officers specially designated by the department of social services. The certified copy of the order and statement of arrearages constitute prima facie evidence that the administrative order is valid and enforceable. The obligor has the burden of proving a mistake of fact as to the arrearages or identity. Any person adversely affected by the administrative decision may seek judicial review in circuit court.

VII. Statistics

According to the Division's self-assessment report for the period ending September 2006, 85% of support orders were established within 6 months of successful service, and 99% were within 12 months.

In state FY 2006, the Division issued 14,185 administrative support orders and modified 3535 orders administratively. Of the 14,185 establishment orders, most were issued by default when the parties did not contest the administrative Notice and Finding of Financial Responsibility. Only 1725 (12 %) were hearing decisions and orders. Of the 3535 administrative modifications, 1030 (29 percent) were hearing decisions and orders.

According to an agency representative, most Missouri administrative support orders are entered by default. However, "default" does not necessarily mean the ignoring of a Notice or the failure to appear at a hearing, after proper service. Because the notice does not require a party to respond if he or she agrees with the Finding of Financial Responsibility, a default may simply mean that the parties agreed with the Finding of Financial Responsibility. Because some parents were concerned about the negative connotations of the word "default," the agency amended the language in the administrative default order. It replaced language which said the parties did not respond to the Notice, with language saying that the parties did not contest the Finding of Financial Responsibility.

VIII. Strengths/Limitations

The agency representative lists the following strengths of Missouri's administrative process:

- More expedited than that of most judicial circuits
- Allows non-attorney staff to accomplish work
- Provides adequate due process and has withstood legal challenges
- Allows the enforcement of many cases without court involvement

The agency representative lists the following limitations of Missouri's administrative process:

- There is difficulty engaging the parties early in the process to obtain the best information (the courts also face this limitation)
- One can expect legal challenges to attempted modification of a judicial order.

IX. Recommendations/Best Practices

Other states interested in pursuing administrative modifications to court orders may benefit from Missouri's experience. Missouri appellate courts have held that judicial orders can be administratively modified, without offending the state constitution, if the proposed administrative modification requires court approval.

The agency can better use its attorney staff if its non-attorney staff can use the administrative process to the greatest extent possible.

Selected Missouri Statutes

Legal actions to establish or enforce support obligations, brought, by whom, procedure--assignment to family services terminates, when, effect--money collected, where deposited.

454.420. Any legal action necessary to establish or enforce support obligations owed to the state shall be brought by prosecuting attorneys, or other attorneys under cooperative agreement with the division of child support enforcement, upon being furnished notice by the division of such obligation. If the amount of the support obligation owed to the state has not been determined because no court order exists, the division of child support enforcement may refer the case to the appropriate prosecuting attorney, or other attorney under cooperative agreement with the division, for establishment and enforcement of a support order or order for reimbursement. When a recipient is no longer eligible for aid to families with dependent children benefits, the assignment shall terminate, unless the recipient and the division of child support enforcement agree otherwise, except for those unpaid support obligations still owing to the state under the assignment at the time of the discontinuance of aid. Upon referral from the division of child support enforcement, such unpaid obligations shall be collected by the prosecuting attorney, or other attorney under cooperative agreement with the division, up to the amount of unreimbursed aid paid by the division of family services prior to or after execution of the assignment of support rights. Moneys collected pursuant to this section shall be paid to the department of social services for deposit in the child support enforcement fund in the state treasury.

Director to issue notice and finding of financial responsibility, when, procedure, contents--computation of periodic future support --hearing, when, failure of parent to request, result.

454.470. 1. If a court order has not been previously entered or if a support order has been entered but is not entitled to recognition pursuant to sections 454.850 to 454.997, the director may issue a notice and finding of financial responsibility to a parent who owes a state debt or who is responsible for the support of a child on whose behalf the custodian of that child is receiving support enforcement services from the division pursuant to section 454.425. A copy of the notice and finding shall be mailed to the last known address of both parents and any person or agency having custody of the child within fourteen days of the issuance of such notice and finding. When appropriate to the circumstances of the individual action, the notice shall state:

- (1) The name of the person or agency with custody of the dependent child and the name of the dependent child for whom support is to be paid;
- (2) The monthly future support for which the parent shall be responsible;
- (3) The state debt, if any, accrued and accruing, and the monthly payment to be made on the state debt which has accrued;

- (4) A statement of the costs of collection, including attorney's fees, which may be assessed against the parent;
- (5) That the parent shall be responsible for providing medical insurance for the dependent child;
- (6) That if a parent desires to discuss the amount of support that should be paid, the parent or person having custody of the child may, within twenty days after being served, contact the division office which sent the notice and request a negotiation conference. The other parent or person having custody of the child shall be notified of the negotiated conference and may participate in the conference. If no agreement is reached on the monthly amount to be paid, the director may issue a new notice and finding of financial responsibility, which may be sent to the parent required to pay support by regular mail addressed to the parent's last known address or, if applicable, the parent's attorney's last known address. A copy of the new notice and finding shall be sent by regular mail to the other parent or person having custody of the child;
- (7) That if a parent or person having custody of the child objects to all or any part of the notice and finding of financial responsibility and no negotiation conference is requested, within twenty days of the date of service the parent or person having custody of the child shall send to the division office which issued the notice a written response which sets forth any objections and requests a hearing; and, that if the director issues a new notice and finding of financial responsibility, the parent or person having custody of the child shall have twenty days from the date of issuance of the new notice to send a hearing request;
- (8) That if such a timely response is received by the appropriate division office, and if such response raises factual questions requiring the submission of evidence, the parent or person having custody of the child shall have the right to a hearing before an impartial hearing officer who is an attorney licensed to practice law in Missouri and, that if no timely written response is received, the director may enter an order in accordance with the notice and finding of financial responsibility;
- (9) That the parent has the right to be represented at the hearing by an attorney of the parent's own choosing;
- (10) That the parent or person having custody of the child has the right to obtain evidence and examine witnesses as provided for in chapter 536, RSMo, together with an explanation of the procedure the parent or person having custody of the child shall follow in order to exercise such rights;
- (11) That as soon as the order is entered, the property of the parent required to pay support shall be subject to collection actions, including, but not limited to, wage withholding, garnishment, liens, and execution thereon;
- (12) A reference to sections 454.460 to 454.510;

(13) That the parent is responsible for notifying the division of any change of address or employment;

(14) That if the parent has any questions, the parent should telephone or visit the appropriate division office or consult an attorney; and

(15) Such other information as the director finds appropriate.

2. The statement of periodic future support required by subdivision (2) of subsection 1 of this section is to be computed as follows:

(1) If there is sufficient information available to the division regarding the parent's financial and living situation, the scale and formula provided for in section 454.480 shall be used; or

(2) If there is insufficient information available to use the scale and formula, an estimate of ability to pay shall be the basis of the statement.

3. Any time limits for notices or requests may be extended by the director, and such extension shall have no effect on the jurisdiction of the court, administrative body, or other entity having jurisdiction over the proceedings.

4. If a timely written response setting forth objections and requesting a hearing is received by the appropriate division office, and if such response raises a factual question requiring the submission of evidence, a hearing shall be held in the manner provided by section 454.475. If no timely written response and request for hearing is received by the appropriate division office, the director may enter an order in accordance with the notice, and shall specify:

(1) The amount of periodic support to be paid, with directions on the manner of payment;

(2) The amount of state debt, if any, accrued in favor of the department;

(3) The monthly payment to be made on state debt, if any;

(4) The amount of costs of collection, including attorney's fees, assessed against the parent;

(5) The name of the person or agency with custody of the dependent child and the name and birth date of the dependent child for whom support is to be paid;

(6) That the property of the parent is subject to collection actions, including, but not limited to, wage withholding, garnishment, liens, and execution thereon; and

(7) If appropriate, that the parent shall provide medical insurance for the dependent child, or shall pay the reasonable and necessary medical expenses of the dependent child.

5. The parent or person having custody of the child shall be sent a copy of the order by registered or certified mail, return receipt requested, addressed to the parent's last known address or, if applicable, the parent's attorney's last known address. The order is final, and action by the director to enforce and collect upon the order, including arrearages, may be taken from the date of issuance of the order. A copy of the order shall also be sent by regular mail to the person having custody of a child for whom an order is issued pursuant to this section.

6. Copies of the orders issued pursuant to this section shall be mailed within fourteen days of the issuance of the order.

7. Any parent or person having custody of the child who is aggrieved as a result of any allegation or issue of fact contained in the notice and finding of financial responsibility shall be afforded an opportunity for a hearing, upon the request in writing filed with the director not more than twenty days after service of the notice and finding is made upon such parent or person having custody of the child, and if in requesting such hearing, the aggrieved parent or person having custody of the child raises a factual issue requiring the submission of evidence.

(L. 1982 S.B. 468 § 15. A.L. 1984 H.B. 1275, A.L. 1986 H.B. 1479, A.L. 1997 S.B. 361)

Effective 7-1-97

Administrative hearing, procedure, effect on orders of social services--support, how determined--failure of parent to appear, result--judicial review.

454.475. 1. Hearings provided for in this section shall be conducted pursuant to chapter 536, RSMo, by administrative hearing officers designated by the Missouri department of social services. The hearing* officer shall provide the parents, the person having custody of the child, or other appropriate agencies or their attorneys with notice of any proceeding in which support obligations may be established or modified. The department shall not be stayed from enforcing and collecting upon the administrative order during the hearing process and during any appeal to the courts of this state, unless specifically enjoined by court order.

2. If no factual issue has been raised by the application for hearing, or the issues raised have been previously litigated or do not constitute a defense to the action, the director may enter an order without an evidentiary hearing, which order shall be a final decision entitled to judicial review as provided in sections 536.100 to 536.140, RSMo.

3. After full and fair hearing, the hearing officer shall make specific findings regarding the liability and responsibility, if any, of the alleged responsible parent for the support of the dependent child, and for repayment of accrued state debt or arrearages, and the costs of collection, and shall enter an order consistent therewith. In making the determination of the amount the parent shall contribute toward the future support of a dependent child,

the hearing officer shall use the scale and formula for minimum support obligations established by the department pursuant to section 454.480.

4. If the person who requests the hearing fails to appear at the time and place set for the hearing, upon a showing of proper notice to that parent, the hearing officer shall enter findings and order in accordance with the provisions of the notice and finding of support responsibility unless the hearing officer determines that no good cause therefor exists.

5. In contested cases, the findings and order of the hearing officer shall be the decision of the director. Any parent or person having custody of the child adversely affected by such decision may obtain judicial review pursuant to sections 536.100 to 536.140, RSMo, by filing a petition for review in the circuit court of proper venue within thirty days of mailing of the decision. Copies of the decision or order of the hearing* officer shall be mailed to any parent, person having custody of the child and the division within fourteen days of issuance.

6. If a hearing has been requested, and upon request of a parent, a person having custody of the child, the division or a IV-D agency, the director shall enter a temporary order requiring the provision of child support pending the final decision or order pursuant to this section if there is clear and convincing evidence establishing a presumption of paternity pursuant to section 210.822, RSMo. In determining the amount of child support, the director shall consider the factors set forth in section 452.340, RSMo. The temporary order, effective upon filing pursuant to section 454.490, is not subject to a hearing pursuant to this section. The temporary order may be stayed by a court of competent jurisdiction only after a hearing and a finding by the court that the order fails to comply with rule 88.01.

(L. 1982 S.B. 468 § 18, A.L. 1984 H.B. 1275, A.L. 1997 S.B. 361)

Effective 7-1-97

Administrative orders may be issued, when--duties of director --hearing.

454.476. 1. If a court order has previously been entered, the director may enter an administrative order in accordance with the court order, upon receiving from the obligee, a child support enforcement agency of another state, or the court:

- (1) A certified copy of the court order together with all modifications thereto;
- (2) A sworn statement by the obligee or a certified statement from the court attesting to or certifying the amount of arrearages under the court order;
- (3) A statement of the name, last known address and, if known, the Social Security number of the obligor; and
- (4) The name and address of the obligor's employer or other payor, if known.

2. The obligor shall be sent a copy of the administrative order by certified mail, return receipt requested, addressed to the obligor's last known address or, if applicable, the obligor's attorney's last known address. The obligee shall be sent a copy of the administrative order by regular mail. Copies of the order shall be mailed within fourteen days of issuance.

3. Upon entry of the order, the director shall issue an order directing an employer or other payor to withhold and pay over money due or to become due to the obligated parent as set out in section 454.505.

4. The obligor or obligee, within fourteen days after receiving notice of the director's order, may request an administrative hearing as provided in section 454.475 to contest the order or withholding thereunder. At such hearing, the certified copy of the court order and the sworn or certified statement of arrearages shall constitute prima facie evidence that the director's order is valid and enforceable. Once the prima facie case is established, the obligor may assert only mistake of fact as a defense. Mistake of fact shall mean an error in the amount of arrearages or an error as to the identity of the obligor. The obligor shall have the burden of proof as to these issues. The obligor may not obtain relief from the withholding by paying the overdue support.

5. If the obligor requests a hearing, the withholding will be implemented unless the obligor posts a bond or other security satisfactory to the director to insure payment of support.

6. Every order which contains a provision for the support of a child, whether entered by a court or an administrative body of this or any other state, and whether entered prior to or subsequent to enactment of this section, shall be enforceable by an order to withhold as provided for by section 454.505 immediately upon compliance with subsection 1 of this section.

(L. 1986 H.B. 1479, A.L. 1997 S.B. 361)

Effective 7-1-97

Paternity order, establishing--entered when--genetic testing required when--docketing of order, result--copies to be sent to bureau of vital records of department of health and senior services --defense of nonpaternity--decision, how rendered.

454.485. 1. The director may enter an order establishing paternity of a child in the course of a support proceeding pursuant to sections 454.460 to 454.510 when the man is presumed to be the child's father pursuant to section 210.822, RSMo, or when both parents sign sworn statements that the paternity of the dependent child for whom support is sought has not been legally established and that the male parent is the father of the child. For purposes of paternity establishment pursuant to this section, a sworn statement shall include a statement verified by a person authorized to take oaths pursuant to section 207.020, RSMo, or section 454.465.

2. The director may enter an order requiring genetic testing in the course of an action to establish paternity pursuant to sections 454.460 to 454.510 or upon the request of a IV-D agency of another state that is seeking to establish paternity. The order may require that the child, the mother or an alleged father submit to tests performed by an expert designated by the division to be qualified as an examiner of genetic markers present on blood cells and components, or other tissue or fluid. Such an examiner shall be qualified to be an expert as defined in section 210.834, RSMo, and shall be considered an expert pursuant to subdivision (5) of subsection 1 of section 210.822, RSMo. In addition to any other provisions for enforcement of the order, the order may be filed pursuant to section 454.490 and refusal to comply with the order shall constitute civil contempt.

3. The docketing, pursuant to section 454.490, of an order establishing paternity pursuant to this section shall establish legal paternity for all purposes. The division shall provide an additional copy of each administrative order to be docketed and the circuit clerk shall, upon docketing, forward such copy to the bureau of vital records of the department of health and senior services. The bureau of vital records shall enter the name of the father on the birth records pursuant to sections 193.085 and 193.215, RSMo, and shall record the Social Security account numbers of both parents, pursuant to section 193.075, RSMo.

4. In no event shall a hearing official conducting a hearing pursuant to sections 454.460 to 454.510 be authorized to enter a finding of nonpaternity in the case of a man presumed to be the biological father of any child pursuant to Missouri law, or of the father of any child born out of wedlock who has acknowledged paternity in writing under oath or has acknowledged that he is responsible for the support, maintenance and education of such child, unless such presumption has been overruled, or such acknowledgment has been ruled void by a court of competent jurisdiction.

5. In an action contesting paternity, the director shall require genetic testing at the request of a party to such action if such request is supported by a sworn statement of such party which:

(1) Alleges paternity and sets forth facts establishing a reasonable possibility of sexual contact between the parties; or

(2) Denies paternity and sets forth facts establishing a reasonable possibility that there was no sexual contact between the parties.

6. The division shall pay the cost of any genetic test ordered pursuant to this section. If the paternity of the alleged father is established, such father may be ordered to pay the cost of such tests. If a genetic test is contested, the director shall not order additional genetic testing when requested by the person contesting the test unless such person pays in advance for such tests.

(L. 1982 S.B. 468 § 17, A.L. 1984 H.B. 1275, A.L. 1986 H.B. 1479, A.L. 1990 S.B. 834, A.L. 1993 S.B. 253, A.L. 1994 H.B. 1491 & 1134 merged with S.B. 508, A.L. 1997 S.B. 361)

Effective 7-1-97

Orders entered by director, docketing of, effect.

454.490. 1. A true copy of any order entered by the director pursuant to sections 454.460 to 454.997, along with a true copy of the return of service, may be filed with the clerk of the circuit court in the county in which the judgment of dissolution or paternity has been entered, or if no such judgment was entered, in the county where either the parent or the dependent child resides or where the support order was filed. Upon filing, the clerk shall enter the order in the judgment docket. Upon docketing, the order shall have all the force, effect, and attributes of a docketed order or decree of the circuit court, including, but not limited to, lien effect and enforceability by supplementary proceedings, contempt of court, execution and garnishment. Any administrative order or decision of the division of child support enforcement filed in the office of the circuit clerk of the court shall not be required to be signed by an attorney, as provided by supreme court rule of civil procedures 55.03(a), or required to have any further pleading other than the director's order.

2. In addition to any other provision to enforce an order docketed pursuant to this section or any other support order of the court, the court may, upon petition by the division, require that an obligor who owes past due support to pay support in accordance with a plan approved by the court, or if the obligor is subject to such plan and is not incapacitated, the court may require the obligor to participate in work activities.

3. In addition to any other provision to enforce an order docketed pursuant to this section or any other support order of the court, division or other IV-D agency, the director may order that an obligor who owes past due support to pay support in accordance with a plan approved by the director, or if the obligor is subject to such plan and is not incapacitated, the director may order the obligor to participate in work activities. The order of the director shall be filed with a court pursuant to subsection 1 of this section and shall be enforceable as an order of the court.

4. As used in this section, "work activities" include:

- (1) Unsubsidized employment;
- (2) Subsidized private sector employment;
- (3) Subsidized public sector employment;
- (4) Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) On-the-job training;
- (6) Job search and readiness assistance;
- (7) Community services programs;

- (8) Vocational educational training, not to exceed twelve months for any individual;
- (9) Job skills training directly related to employment;
- (10) Education directly related to employment for an individual who has not received a high school diploma or its equivalent;
- (11) Satisfactory attendance at a secondary school or course of study leading to a certificate of general equivalence for an individual who has not completed secondary school or received such a certificate; or
- (12) The provision of child care services to an individual who is participating in a community service program.

(L. 1982 S.B. 468 § 19, A.L. 1997 S.B. 361, A.L. 1998 S.B. 910)

Motion to modify order, review--form of motion, service, procedure -- effective, when--venue for judicial review of administrative order, procedure.

454.496. 1. At any time after the entry of a court order for child support in a case in which support rights have been assigned to the state pursuant to section 208.040, RSMo, or a case in which support enforcement services are being provided pursuant to section 454.425, the obligated parent, the obligee or the division of child support enforcement may file a motion to modify the existing child support order pursuant to this section, if a review has first been completed by the director of child support enforcement pursuant to subdivision (13) of subsection 2 of section 454.400. The motion shall be in writing in a form prescribed by the director, shall set out the reasons for modification and shall state the telephone number and address of the moving party. The motion shall be served in the same manner provided for in subsection 5 of section 454.465 upon the obligated parent, the obligee and the division, as appropriate. In addition, if the support rights are held by the division of family services on behalf of the state, the moving party shall mail a true copy of the motion by certified mail to the person having custody of the dependent child at the last known address of that person. The party against whom the motion is made shall have thirty days either to resolve the matter by stipulated agreement or to serve the moving party and the director, as appropriate, by regular mail with a written response setting forth any objections to the motion and a request for hearing. When requested, the hearing shall be conducted pursuant to section 454.475 by hearing officers designated by the department of social services. In such proceedings, the hearing officers shall have the authority granted to the director pursuant to subsection 6 of section 454.465.

2. When no objections and request for hearing have been served within thirty days, the director, upon proof of service, shall enter an order granting the relief sought. Copies of the order shall be mailed to the parties within fourteen days of issuance.

3. A motion to modify made pursuant to this section shall not stay the director from enforcing and collecting upon the existing order unless so ordered by the court in which the order is docketed.

4. The only support payments which may be modified are payments accruing subsequent to the service of the motion upon all parties to the motion.

5. The party requesting modification shall have the burden of proving that a modification is appropriate pursuant to the provisions of section 452.370, RSMo.

6. Notwithstanding the provisions of section 454.490 to the contrary, an administrative order modifying a court order is not effective until the administrative order is filed with and approved by the court that entered the court order. The court may approve the administrative order if no party affected by the decision has filed a petition for judicial review pursuant to sections 536.100 to 536.140, RSMo. After the thirty-day time period for filing a petition of judicial review pursuant to chapter 536, RSMo, has passed, the court shall render its decision within fifteen days. If a petition for judicial review is filed, the court shall review all pleadings and the administrative record, as defined in section 536.130, RSMo, pursuant to section 536.140, RSMo. After such review, the court shall determine if the administrative order complies with section 452.340 and applicable supreme court rules. If it so determines, the court shall make a written finding on the record that the order complies with section 452.340 and applicable supreme court rules and approve the order or, if after review pursuant to section 536.140, RSMo, the court finds that the administrative order does not comply with supreme court rule 88.01, the court may select any of the remedies set forth in subsection 5 of section 536.140, RSMo. The court shall notify the parties and the division of any setting pursuant to this section.

7. Notwithstanding the venue provisions of chapter 536, RSMo, to the contrary, for the filing of petitions for judicial review of final agency decisions and contested cases, the venue for the filing of a petition for judicial review contesting an administrative order entered pursuant to this section modifying a judicial order shall be in the court which entered the judicial order. In such cases in which a petition for judicial review has been filed, the court shall consider the matters raised in the petition and determine if the administrative order complies with section 452.340 and applicable supreme court rules. If the court finds that the administrative order should not be approved, the court shall set the matter for trial de novo. The court shall notify the parties and the division of the setting of such proceeding. If the court determines that the matters raised in the petition are without merit and that the administrative order complies with the provisions of section 452.340 and applicable supreme court rules, the court shall approve the order.

(L. 1993 S.B. 253, A.L. 1994 H.B. 1491 & 1134 merged with S.B. 508, A.L. 1997 S.B. 361)

Effective 7-1-97

Director's duty to modify a child support order--automated methods used for eligibility for modification.

454.498. 1. Notwithstanding section 452.370, RSMo, and sections 454.496 and 454.500, or any other section requiring a showing of substantial and continuing change in circumstances to the contrary, and as provided for in subdivision (13) of subsection 2 of section 454.400 and taking into account the best interest of the child, the director shall:

(1) Modify, if appropriate, a support order being enforced under Title IV-D of the Social Security Act in accordance with the guidelines and criteria set forth in supreme court rule 88.01 if the amount in the current order differs from the amount that would be awarded in accordance with such guidelines; or

(2) Use automated methods (including automated comparisons with wage or state income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment and apply the adjustment to the orders eligible for adjustment under any threshold that may be established by the state.

2. If the division conducts a review pursuant to subdivision (2) of subsection 1 of this section, either party to the order may contest the adjustment within thirty days after the date of the notice of adjustment by requesting, if appropriate, a review and modification in accordance with the guidelines and criteria set forth in supreme court rule 88.01. If the review is timely requested, the division shall review and modify the order, if appropriate, in accordance with supreme court rule 88.01. The division may conduct a review pursuant to subdivision (2) of subsection 1 of this section only if the division is unable to conduct a review pursuant to subdivision (1) of subsection 1 of this section.

3. The division may review and adjust a support order upon request outside the three-year cycle only upon a demonstration by the requesting party of a substantial change in circumstances which shall be determined by the division. If the division determines that an adjustment shall not be made, the division shall, within fourteen days, mail notice of such determination to the parents or other child support agency, if any.

(L. 1997 S.B. 361)

Effective 7-1-97

Modification of an administrative order, procedure, effect--relief from orders, when.

454.500. 1. At any time after the entry of an order pursuant to sections 454.470 and 454.475, the obligated parent, the division, or the person or agency having custody of the dependent child may file a motion for modification with the director. Such motion shall be in writing, shall set forth the reasons for modification, and shall state the address of the moving party. The motion shall be served by the moving party in the manner provided for

in subsection 5 of section 454.465 upon the obligated parent or the party holding the support rights, as appropriate. In addition, if the support rights are held by the division of family services on behalf of the state, a true copy of the motion shall be mailed by the moving party by certified mail to the person having custody of the dependent child at the last known address of that person. A hearing on the motion shall then be provided in the same manner, and determinations shall be based on considerations set out in section 454.475, unless the party served fails to respond within thirty days, in which case the director may enter an order by default. If the child for whom the order applies is no longer in the custody of a person receiving public assistance or receiving support enforcement services from the department, or a division thereof, pursuant to section 454.425, the director may certify the matter for hearing to the circuit court in which the order was filed pursuant to section 454.490 in lieu of holding a hearing pursuant to section 454.475. If the director certifies the matter for hearing to the circuit court, service of the motion to modify shall be had in accordance with the provisions of subsection 5 of section 452.370, RSMo. If the director does not certify the matter for hearing to the circuit court, service of the motion to modify shall be considered complete upon personal service, or on the date of mailing, if sent by certified mail. For the purpose of 42 U.S.C. 666(a)(9)(C), the director shall be considered the "appropriate agent" to receive the notice of the motion to modify for the obligee or the obligor, but only in those instances in which the matter is not certified to circuit court for hearing, and only when service of the motion is attempted on the obligee or obligor by certified mail.

2. A motion for modification made pursuant to this section shall not stay the director from enforcing and collecting upon the existing order pending the modification proceeding unless so ordered by the court.

3. Only payments accruing subsequent to the service of the motion for modification upon all named parties to the motion may be modified. Modification may be granted only upon a showing of a change of circumstances so substantial and continuing as to make the terms unreasonable. In a proceeding for modification of any child support award, the director, in determining whether or not a substantial change in circumstances has occurred, shall consider all financial resources of both parties, including the extent to which the reasonable expenses of either party are, or should be, shared by a spouse or other person with whom he or she cohabits, and the earning capacity of a party who is not employed. If the application of the guidelines and criteria set forth in supreme court rule 88.01 to the financial circumstances of the parties would result in a change of child support from the existing amount by twenty percent or more, then a prima facie showing has been made of a change of circumstances so substantial and continuing as to make the present terms unreasonable.

4. The circuit court may, upon such terms as may be just, relieve a parent from an administrative order entered against that parent because of mistake, inadvertence, surprise, or excusable neglect.

5. No order entered pursuant to section 454.476 shall be modifiable pursuant to this section, except that an order entered pursuant to section 454.476 shall be amended by the

director to conform with any modification made by the court that entered the court order upon which the director based his or her order.

6. When the party seeking modifications has met the burden of proof set forth in subsection 3 of this section, then the child support shall be determined in conformity with the criteria set forth in supreme court rule 88.01.

7. The Social Security number of the parents shall be recorded on any order entered pursuant to this section.

(L. 1982 S.B. 468 § 21, A.L. 1984 H.B. 1275, A.L. 1986 H.B. 1479, A.L. 1987 H.B. 484, A.L. 1990 S.B. 834, A.L. 1994 H.B. 1491 & 1134 merged with S.B. 508, A.L. 1997 S.B. 361) Effective 7-1-97

Support, courts, jurisdiction, effect of determinations.

454.501. Nothing contained in sections 454.465 to 454.510 shall deprive courts of competent jurisdiction from determining the support duty of a parent against whom an order is entered by the director pursuant to the authority created by sections 454.460 to 454.505. Such a determination by the court shall supersede the director's order as to support payments due subsequent to the entry of the order by the court, but shall not affect any support arrearage which may have accrued under the director's order. The director's order shall be pleaded and received by the court as evidence of the extent of the parent's duty of support.

(L. 1984 H.B. 1275)

Determination of arrearages and credits, certain cases, procedure -- hearings--filing.

454.810. 1. For all IV-D cases as defined by section 452.345, RSMo, the division of child support enforcement shall determine support arrearages and credits by consent of the parties to the support order or by use of the administrative order process set out in section 454.476.

2. Notwithstanding any provisions of section 454.475 to the contrary, hearings pursuant to this section may be requested by either party and may be conducted by nonattorney hearing officers specially designated by the department of social services. Any person adversely affected by any hearing decisions pursuant to this section may obtain judicial review pursuant to sections 536.100 to 536.140, RSMo.

3. Any support arrearage and credit determination established pursuant to this section and all documentation that forms the basis for the determination shall be filed with the circuit clerk and shall be considered part of the official trusteeship record if filed prior to October 1, 1999, or if filed after such date, as part of the records of the payment center pursuant to this chapter for all purposes.

(L. 1993 S.B. 253, A.L. 1999 S.B. 291) Effective 7-1-99